

EXCEPTION



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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

CARL J. KUNASEK
CHAIRMAN

JIM IRVIN
COMMISSIONER

WILLIAM A. MUNDELL
COMMISSIONER

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IN THE MATTER OF THE APPLICATION OF
ARIZONA PUBLIC SERVICE COMPANY FOR
APPROVAL OF ITS STRANDED COST
RECOVERY.

DOCKET NO. E-01345A-98-0473

IN THE MATTER OF THE FILING OF
ARIZONA PUBLIC SERVICE COMPANY OF
UNBUNDLED TARIFFS PURSUANT TO A.A.C.
R14-2-1601 et. seq.

DOCKET NO. E-01345A-97-0773

IN THE MATTER OF THE COMPETITION IN
THE PROVISION OF ELECTRIC SERVICES
THROUGHOUT THE STATE OF ARIZONA.

DOCKET NO. RE-00000C-94-0165

EXCEPTIONS OF THE ARIZONA
TRANSMISSION DEPENDENT UTILITY GROUP
TO THE CODE OF CONDUCT SUBMITTED BY
ARIZONA PUBLIC SERVICE COMPANY
PURSUANT TO STIPULATION WITH
COMMISSION STAFF

The Arizona Transmission Dependent Utility Group¹ ("ATDUG"), by its undersigned counsel, herewith submits its exceptions to the Code of Conduct submitted by Arizona Public Service Company ("APS") on January 22 2000, pursuant to stipulation with the Arizona Corporation Commission ("Commission") staff. These exceptions are submitted pursuant to notice of the Executive Secretary dated February 24, 2000.

¹ Aguila Irrigation District, Ak-Chin Indian Community, Buckeye Water Conservation and Drainage District, Central Arizona Water Conservation District, Electrical District No. 3, Electrical District No. 4, Electrical District No. 5, Electrical District No. 7, Electrical District No. 8, Harquahala Valley Power District, Maricopa County Municipal Water District No. 1, McMullen Valley Water Conservation and Drainage District, Roosevelt Irrigation District, City of Safford, Tonopah Irrigation District, Wellton-Mohawk Irrigation and Drainage District.

1 The Code of Conduct contains provisions that are contrary to provisions
2 in the competition regulations of the Commission and must be modified.

3 The stipulated Code of Conduct uses the term "Third Party" in a fashion
4 that confines that reference to entities that are regulated by the
5 Commission. The Commission's rules with regard to submitting a Code of
6 Conduct are not so limited. A.A.C. Section R14-2-616 provides in pertinent
7 part:

8 B. The Code of Conduct shall address the following subjects:

9 * * *

10 2. Appropriate procedures to ensure that the Utility Distribution
11 Company's competitive affiliate does not have access to
12 confidential utility information that is not also available to
13 other market participants;

14 * * *

15 5. Appropriate procedures to ensure that the Utility Distribution
16 Company does not give its competitive affiliate any preferential
17 treatment such that other market participants are unfairly
18 disadvantaged or discriminated against; (Emphasis supplied.)

19 * * *

20 The Commission chose not to limit these provisions to "Electric Service
21 Providers". The definition of Electric Service Provider in A.A.C. Section
22 R14-2-1601(15) is limited to entities regulated by the Commission. Indeed,
23 the term is used throughout the rules in that context.

24 This broader reference to "other market participants" can only
25 logically be interpreted to include market participants that are not

1 regulated by the Commission but are lawfully engaged in one or more aspects
2 of retail electric service in Arizona.

3 The logic of this reference in this interpretation is obvious. The
4 Commission is concerned about what confidential information in the hands of
5 APS might be improperly distributed, regardless of the recipient of the
6 information. It is the act of improperly disseminating the information that
7 is inappropriate, not limited by the nature of the recipient.

8 Likewise, the Commission is charged with regulating all of the
9 competitive conduct of APS, not just some of it. It has chosen to provide a
10 nondiscriminatory standard for APS to follow. It would make no sense to say
11 to APS that it could be nondiscriminatory as to certain classes of parties
12 but free to be unfairly discriminatory as to others. The Commission's
13 obligation to ensure nondiscriminatory conduct relates to its charge to
14 regulate competitive conduct of APS across the board, not selectively.

15 The Code of Conduct inconsistency with the Commission's rules can be
16 remedied very simply. The Commission may either add to the definition of
17 "Third Party" in the Code of Conduct the phrase from the Commission rules "or
18 other market participants" or it may add the qualifying phrase after the use
19 of the term in the eleven places where it appears in the Code of Conduct.
20 Since all of the references to "Third Party" in the Code of Conduct relate
21 either to confidential customer information or nondiscriminatory conduct,
22 modifying the definition would be the easiest way to bring the Code of
23 Conduct into conformance with the rules.

24 This seemingly small matter is actually a seminal examination of the
25 role of the Commission in retail electric competition in Arizona. This is

1 the first of these Codes of Conduct and the ostensible template for those
2 that follow. In this proceeding, the Commission will either declare its
3 interest in the conduct of its regulated utilities to be limited to
4 relationships with other regulated utilities or it will declare that it is
5 setting standards for regulated entities to meet in all their competitive
6 business conduct affecting Arizona electric consumers. Whichever direction
7 the Commission takes will have a profound effect on relationships among
8 entities engaged in retail electric service in Arizona in the future. We
9 urge the Commission to take the broader view of its role expressed in A.R.S.
10 Section 40-202.C.5.

11 RESPECTFULLY SUBMITTED this 6th day of March, 2000.

12
13 ARIZONA TRANSMISSION DEPENDENT
UTILITY GROUP

14
15 By 

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18 Original and 18 copies of the
19 foregoing filed this 6th day
of March, 2000 with:

20 Docket Control
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22 Copies of the foregoing mailed
23 this 6th day of March, 2000,
to:

24 Service List for Docket No. RE-00000C-94-0165

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